

Sec. 87. Intent; Retirement System as Qualified Pension Plan and Trust as Exempt Organization; Administration; Employer-Financed Benefit Limitations; Annual Adjustment; Use and Investment of Assets; Return of Post-Tax Member Contributions; Beginning Date of Distributions; Termination of Participation in Retirement System; Election to Rollover to Retirement Plan; Interest Rate; Compliance with Section 415 of Internal Revenue Code and Regulations.

- (1) This section is enacted pursuant to federal law that imposes certain administrative requirements and benefit limitations for qualified governmental plans. The Retirement Board intends that the Retirement System be a qualified pension plan under 401 of the IRC and that the trust be an exempt organization under 501 of the IRC. The Board shall administer the Retirement System to fulfill this intent.
- (2) Notwithstanding any other provision of this Plan Document, the System shall be administered in compliance with the provisions of 415 of the IRC and revenue service regulations under that section that are applicable to governmental plans. If there is a conflict between this section and another section of this Plan, this section prevails.
- (3) The annual benefit otherwise payable to a member at any time shall not exceed the maximum permissible amount under 415(b) of the IRC. Except as otherwise provided in this section, benefits provided by the System shall not exceed the dollar limit in effect under 415(b)(1)(A) of the IRC. This limitation is subject to the following conditions:
 - (a) The dollar limit must be reduced where a member has fewer than ten (10) years of participation in the Plan, when retirement benefits under the Plan commence. This adjustment is made by multiplying the dollar limit by a fraction: (i) the numerator of which is the number of years (or part thereof) of participation in the plan as of, and including, the current limitation year, and (ii) the denominator of which is 10. If the \$10,000 minimum benefit under 415(b)(4) is applicable, that dollar amount must be reduced where a member has fewer than ten (10) years of service with the employer at the time the member begins to receive retirement benefits under the Plan. This adjustment is made by multiplying the \$10,000 minimum benefit by a fraction: (i) the numerator of which is the number of years (or part thereof) of service with the employer as of, and including the current limitation year, and (ii) the denominator of which is 10.
 - (b) If benefits in any form other than a straight life annuity is selected (other than Form of Payment II, IIA, or III with a spouse as named survivor beneficiary) or if the benefit as determined includes after-tax employee contributions or rollovers, then the benefit to be tested under this section must be adjusted to an actuarial equivalent straight life annuity, beginning at the same age. For limitation years beginning on or after January 1, 1995, the actuarially equivalent straight life annuity for purposes of applying the limitations under 415(b) to benefits:
 - (i) That are not subject to 417(e)(3) (generally, a monthly benefit) is equal to the greater of (A) the equivalent annual benefit computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of benefit payable, or (B) the equivalent annual benefit computed using a 5 percent interest rate assumptions and the applicable mortality table. The applicable mortality

table is: (A) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (B) for years after December 31, 2008, the applicable mortality tables described in 417(e)(3)(B) of the IRC (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 417(e)(3)(B) of the IRC).

- (ii) Paid in a form to which IRC 417(e)(3) applies (generally, a lump sum benefit), is equal to the greatest of (or the reduced IRC 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):
 - (A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
 - (B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in 417(e)(3)(B) of the IRC (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 417(e)(3)(B) of the IRC); or
 - (C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in 417(e)(3)(B) of the IRC (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the IRC), divided by 1.05.

The annual benefit does not include any benefits attributable to employee contributions or rollover contributions, or assets transferred from a qualified plan that was not maintained by the employer.

The actuary may adjust the 415(b) limit at the annuity starting date in accordance with this subsection.

- (c) For limitation years beginning on or after January 1, 1995, if the benefit of a member begins before age 62, the defined benefit dollar limitation applicable to the member at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the member at age 62 (adjusted under (a) above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the equivalent amount computed using the interest rate and mortality table (or tabular factor) used in the plan for actuarial equivalence for early retirement benefits, or (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the applicable mortality table. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph (c) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.
- (d) If the benefit of a member begins after the member attains age 65, the defined benefit dollar limitation applicable to the member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the member at age 65 (adjusted under (a) above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as the lesser of (i) the equivalent amount computed using the interest rate and mortality table (or tabular factor) used in the plan for actuarial equivalence for late retirement benefits, or (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table.
- (e) For purposes of this section, the following benefits shall not be taken into account in applying these limits:
 - (i) Any ancillary benefit which is not directly related to retirement income benefits;
 - (ii) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

- (iii) Any other benefit not required under IRC 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of IRC 415(b)(1).
- (f) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in IRC 414(j) maintained by the member's employer in this Plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.
- (g) Effective on and after July 1, 2009, for purposes of applying the 415(b) limit to a member with no lump sum benefit, the following will apply:
 - (i) A member's applicable 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments;
 - (ii) To the extent that the member's annual benefit equals or exceeds the limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the 415(b) limit;
 - (iii) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the IRC 415(b)(1)(A) dollar limit under IRC 415(d), and the Treasury Regulations thereunder.
- (h) On and after July 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit will be applied taking into consideration cost of living increases as required by IRC 415(b) and applicable Treasury Regulations.
- (i) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of IRC 415(n) will be treated as met only if:
 - (i) The requirements of IRC 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC 415(b), or
 - (ii) The requirements of IRC 415(b) are met, determined by treating all such contributions as annual additions for purposes of IRC 415(c).
 - (iii) For purposes of applying this section, the plan will not fail to meet the reduced limit under IRC 415(b)(2)(C) solely by reason of this subparagraph and will not fail to meet the percentage limitation under IRC 415(c)(1)(B) solely by reason of this section.

- (iv) For purposes of this section the term "permissive service credit" means service credit—
 - (A) Specifically allowed by state statute for purposes of calculating a member's benefit under the plan,
 - (B) Which such member has not received under the plan, and
 - (C) Which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (B), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the plan.

- (v) The plan will fail to meet the requirements of this section if:
 - (A) More than five years of nonqualified service credit are taken into account for purposes of this subparagraph or
 - (B) Any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the plan.
- (vi) For purposes of paragraph (v), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:
 - (A) Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in IRC 415(k)(3)),
 - (B) Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in IRC 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

- (C) Service as an employee of an association of employees who are described in clause (A), or
- (D) Military service (other than qualified military service under section 414(u)) recognized by the plan.

In the case of service described in clause (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

- (vii) In the case of a trustee-to-trustee transfer after December 31, 2001, to which IRC 403(b)(13)(A) or IRC 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—
 - (A) The limitations of paragraph (v) will not apply in determining whether the transfer is for the purchase of permissive service credit, and
 - (B) The distribution rules applicable under federal law to the plan will apply to such amounts and any benefits attributable to such amounts.
- (viii) For an eligible participant, the limitation of IRC 415(c)(1) shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the plan as in effect on August 5, 1997. For purposes of this paragraph, an eligible participant is an individual who first became a participant in the plan before January 1, 1998.
- (j) Notwithstanding any other provision of law to the contrary, the plan may modify a request by a member to make a contribution under this rule if the amount of the contribution would exceed the limits provided in IRC 415 by using the following methods:
 - (i) If the law requires a lump sum payment for the purchase of service credit, the plan may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under IRC 415(c) or 415(n).
 - (ii) If payment pursuant to subparagraph (i) will not avoid a contribution in excess of the limits imposed by IRC 415(c) or 415(n), the plan may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.
- (k) Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan shall not be taken into account for purposes of IRC 415, in accordance with applicable Treasury Regulations.

- (l) Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's Defined Benefit Component under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans; and next, by reducing the member's Defined Contribution Component benefit under any defined benefit plans; and next by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

- (4) Annual additions to any member's account shall not exceed the limit specified in section 415(c). For years beginning on or before December 31, 2001 the limit is the lesser of 25% of the member's compensation or \$30,000, as adjusted for cost-of-living increases under subsection (5). For years beginning after December 31, 2001, the limit is the lesser of 100% of the member's compensation or \$40,000, as adjusted for cost-of-living increases under subsection (5). This limit subject to the following definitions and conditions:
 - (a) For limitation years beginning after December 31, 1997, compensation paid or made available during such limitation year shall include any elective deferral (as defined in IRC 401(g)(3), and any amount which is contributed or deferred by the employer at the election of the member and which is not includible in gross income of the employee by reason of 125 or 457 of the IRC. For plan and limitation years beginning on and after January 1, 2001, compensation paid or made available during such plan and limitation years shall include elective amounts that are not includable in the gross income of the member by reason of 132(f)(4) of the IRC.

For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

- (i) The payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

- (ii) The payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

- (iii) Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in the second paragraph of this subsection (a) are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of 414(u)(1) of the IRC) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

An employee who is in qualified military service (within the meaning of 414(u)(1) of the IRC) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

Beginning January 1, 2009, to the extent required by 414(u)(12) of the IRC, an individual receiving differential wage payments (as defined under 3401(h)(2) of the IRC) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under 415(c) of the IRC. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Back pay, within the meaning of Treasury Regulation 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

- (b) All defined contribution plans of an employer shall be treated as one defined contribution plan for the purposes of the limitations under 415(c) of the IRC.
- (c) "Annual Additions" are defined by Treasury Regulation 1.415(c)-1. For defined benefit plan purposes, annual additions generally include after-tax mandatory and voluntary employee contributions. Excluded from the definition of annual additions are picked-up contributions to the defined benefit plan, repayments of refunded contributions, rollovers, and trustee-to-trustee transfers.

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- (5) Section 415(d) of the IRC requires the Commissioner of Internal Revenue to adjust the dollar limit described in subsections (3) and (4) to reflect cost of living increases. These subsections shall be administered using the limitations applicable to each calendar year as adjusted by the Commissioner of Internal Revenue under 415(d) of the IRC. The System shall adjust the benefits subject to the limitation each year to conform with the adjusted limitation.
- (6) The assets of the System shall be held and invested for the sole purpose of meeting the legitimate obligations of the System and shall not be used for any other purpose. The assets shall not be used for or diverted to a purpose other than for the exclusive benefit of the members, vested former members, retirees, and beneficiaries before satisfaction of all System liabilities.
- (7) The System shall return post-tax member contributions made by a member and received by the system to a member upon retirement, pursuant to internal revenue service regulations and approved internal revenue service exclusion ratio tables. For Benefit Program DROP authorized under section 30, the interest rate and mortality table used for calculating the portion of the lump sum attributable to a member's post-tax member contributions shall be as provided under subsection (11) of this section 87.
- (8) The required beginning date for retirement allowances and other distributions shall not be later than the later of (i) April 1 of the calendar year following the calendar year in which the employee attains age 70½ or (ii) April 1 of the calendar year following the calendar year in which the employee retires.
- (9) If a participating municipality or court discontinues participation in the Retirement System, or if the Retirement System is terminated, the interest of the members, vested former members, retirees, and beneficiaries in the plan is nonforfeitable to the extent funded as described in 411(d)(3) of the IRC and the related Internal Revenue Service regulations applicable to governmental plans.
- (10) Notwithstanding any other provision of this Plan to the contrary that would limit a distributee's election under this Plan, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made on or after January 1, 1993.
- (11) For purposes of determining actuarial equivalent retirement allowances under section 27(2)(b) through (e), the actuarially assumed interest rate shall be 8% as of December 31, 2001, with utilization of the 1994 Group Annuity Mortality Table.
- (12) Any distribution made under the Plan shall be made in accordance with 401(a)(9) of the IRC and the regulations issued thereunder.
- (13) Notwithstanding any other provision of this Plan, the compensation of a member of the System shall be taken into account for any year under the System only to the extent that it does not exceed the compensation limit established in 401(a)(17) of the IRC, as adjusted for cost-of-living increases in accordance with 401(a)(17)(B) of the IRC. For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, compensation for any prior determination period shall be limited to \$200,000. This

subsection applies only to any person who first becomes a member of the Retirement System on or after October 1, 1996 (“noneligible participants”), and shall be effective for noneligible participants as of October 1, 1996.

- (14) Notwithstanding any other provision of this Plan, contributions, benefits, and service credit with respect to qualified military service will be provided under the Retirement System in accordance with 414(u) of the IRC. This subsection applies to all qualified military service on or after December 12, 1994.